

General Information Letter: Overpayment shown on a return filed more than 3 years after the due date may not be refunded or applied against the estimated tax liability for the subsequent year.

September 12, 2002

Dear:

This is in response to your letter dated September 10, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

In your letter you have stated the following:

In response to your August 20, 2002 letter, I am still a little confused by your response. While you have stated in your letter that the "\$1,004 overpayment shown on your 1993 return against your estimated tax liability for 1994 cannot be allowed," it appears to me that the State has received a win fall. Since you are not crediting the 1994 tax year for the overpayment, then the \$1,004 should have been refunded to the taxpayer. My records indicate that the \$1,004 was never refunded. Accordingly, the State still has possession of the \$1,004.

Based on your response, if the \$1,004 is paid as demanded by the State, the tax has been paid twice, once on the 1993 return and now on the 1994 tax return. How is this fair to the taxpayer? Where has that money gone to? I can assure you that this is not an issue about the money. I am only trying to understand why the State believes I should pay a tax twice.

In order to resolve this, I would propose the following: I will pay to the State \$1,004. All penalties and interest would be forgiven and the 1993 and 1994 tax years would be shown as being paid in full. In addition, all liens and other related matters would be cleared and shown as be paid or resolved in full.

After three years in dealing with the Department of Revenue and getting no response to any inquiries, it's good to finally receive a response which is understandable. If you have any questions, please feel free to contact me.

The copy of the 1993 return you attached to your earlier letter shows an overpayment of \$1,004, which you elected to credit against your estimated tax liability for 1994. That copy also indicates that the return was signed by you on January 18, 1999. The copy of the 1994 return you attached indicates that it was signed by you on May 10, 2000.

### **Response**

As I explained to you in my August 20, 2002, letter, you are not entitled to either a refund or to a credit for the \$1,004 overpayment reported on your 1993 return. My letter used the word "credit"

because your inquiry asserted that you were not asking for a refund, and therefore were not barred by the statute of limitations.

As quoted in my letter, Section 911(a) of the Illinois Income Tax Act (35 ILCS 5/911) provides:

Except as otherwise provided in this Act:

- (1) A claim for refund shall be filed not later than 3 years after the date the return was filed (in the case of returns required under Article 7 of this Act respecting any amounts withheld as tax, not later than 3 years after the 15th day of the 4th month following the close of the calendar year in which such withholding was made), or one year after the date the tax was paid, whichever is the later; and
- (2) No **credit or refund** shall be allowed or made with respect to the year for which the claim was filed unless such claim is filed within such period. (emphasis added)

As also quoted in my letter, Section 911(d)(1) provides:

If the claim was filed by the claimant during the 3-year period prescribed in subsection (a), the amount of the **credit or refund** shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. (emphasis added)

Under these provisions, your claim for a credit for estimated taxes paid in 1993 was not timely, and no credit can be allowed. Nor can a refund of the \$1,004 overpayment be allowed. You did not file your return until 1999, more than 5 years after the estimated payments reported on the return were made. These provisions would be meaningless if you could receive the benefit of the \$1,004 by underpaying your tax liability for another year by \$1,004, and then asserting that the State must take payment out of the 1993 overpayment. Under the Illinois Income Tax Act, you have no right or claim to that \$1,004 and cannot use it as a payment of your 1994 tax. And this is solely the result of your failure to file a return for more than 3 years after the return was due.

With respect to penalties and interest, Section 3-8 of the Uniform Penalty and Interest Act provides that no late filing or late payment penalty is due if the taxpayer had reasonable cause for the delinquency. You have not, to my knowledge, stated any basis for a determination that you had reasonable cause for any of your delinquencies. If you believe you had reasonable cause, please provide us with a statement explaining your position, and we will give it due consideration.

There is no provision in the law for abating or waiving interest.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

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Sincerely,

Paul S. Caselton  
Deputy General Counsel -- Income Tax